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SENATE

REPORT
99–401

AMENDING THE RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

AUGUST 13 (legislative day, AUGUST 11), 1986.—Ordered to be printed

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Mr. MATHIAS, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Res. 479]

The Committee on Rules and Administration, having considered an original resolution (S. Res. 479) amending the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, reports favorably thereon and recommends that the resolution be agreed to.

BACKGROUND

On August 12, 1986, the Committee on Rules and Administration met to consider the rules and procedures of the United States Senate for conducting impeachment trials of civil officers of the United States government. This solemn responsibility for impeachment trials is assigned to the Senate in Article I, Section 3, Clauses 6 and 7 of the Constitution. The words of these two clauses are:

> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.
>
> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law.

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To Alexander Hamilton fell the task of explaining the reasoning for this important assignment being given to the Senate by the founding fathers at the Constitutional Convention. In Federalist Paper number 65, Hamilton states:

> A well constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiciton are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *Political,* as they relate chiefly to injuries done immediately to society itself.

Continuing his arguments, Hamilton notes:

> The [Constitutional] Convention . . . thought the Senate the most fit depositary of this important trust. Where else, than in the Senate, could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve unawed and uninfluenced the necessary impartiality between an individual accused, and the representatives of the people, his accusers?

Hamilton further asserted a fatal flaw in propositions to lodge the responsibility for trying impeachments in the Supreme Court or some lesser judicial tribunal. First, he contended, the Supreme Court was too small a body to confront the House of Representatives; second, a person impeached still faced the possibility of criminal indictment and trial in a Federal court; and third, the independence granted the judiciary by the provision in the Constitution of life tenure in good behavior for Federal judges necessitated an Impeachment tribunal separate and apart from the judicial branch of government.

On June 26, 1986, the House Judiciary Committee voted to report four articles of impeachment for high crimes and misdemeanors on Harry E. Claiborne, Judge of the United States District Court for the District of Nevada. The House of Representatives unanimously agreed to these articles by adopting H. Res. 461, on July 22, 1986, and by agreeing to three subsequent resolutions appointing managers, instructing the House to inform the Senate of these impeachment articles, and authorizing the Managers to prepare for and to conduct the impeachment trial.

In anticipation of receiving these impeachment articles from the House, the Minority and Majority Leaders, Senator Byrd and Senator Dole, submitted Senate Resolutions 438 and 439 on June 26, 1986, both which were referred to the Committee on Rules and Administration.

S. Res. 438 would direct the Committee on Rules and Administration "to study the Senate rules and precedents applicable to impeachment trials [and] report back no later than August 1, 1986." S. Res. 439 would authorize the reprinting of Dr. Floyd M. Riddick's "Procedure and Guidelines for Impeachment Trials in the United States Senate," Senate Document 93–102. (Senate Resolu-

tion 439 was separately ordered reported favorably at this same Committee mark-up session on August 12, 1986.) Copies of these two resolutions, together with copies of the "Procedure and Guidelines" document and the 1974 committee report (93–1125) containing the Rules Committee's proposed amendments to the "Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials," were used by the Committee in its August 12, 1986, deliberations. (With the subsequent resignation of President Nixon, no further action on these proposed amendments, S. Res. 390, 93d Congress, 2d Session, occurred.)

The proposed 1974 amendments to the Senate's impeachment rules of practice and procedure are also contained in Senate Report 93–1125; these amendments resulted from extensive hearings and committee deliberations and were the basis for the Committee on Rules and Administration's consideration of S. Res. 438.

Committee Action

On August 12, 1986, by unanimous voice vote, the Committee on Rules and Administration ordered reported S. Res. 479, which contains the same changes to the Senate Impeachment Rules as reported by the committee on August 22, 1974.

Explanation for Changes in the Rules

The following list covers all 26 Senate Impeachment Rules: Those rules reported with no changes; those rules that were amended; and the reasons therefor.

I. NOTICE TO THE SENATE OF IMPEACHMENT

Rule I, which provides for the formal notifications between the House and the Senate of an impeachment, *is reported without change.*

II. [HOUSE] MANAGERS REPORT TO THE SENATE

Rule II, which relates to the appearance of the mangers in the Senate Chamber, and the presentation of the articles of impeachment, *is reported without change.*

III. ORDER OF BUSINESS UPON RECEIPT OF ARTICLES OF IMPEACHMENT

Rule III, which provides that following the presentation of the impeachment articles the Senate shall organize for trial and the oath shall be administered to Senators by the Presiding Officer, *is reported without change.*

IV. IMPEACHMENT OF PRESIDENT AND VICE PRESIDENT; RÓLE OF CHIEF JUSTICE

Rule IV, which implements the constitutional requirement that the Chief Justice of the United States shall preside over the Senate when sitting on a presidential impeachment trial, is amended in two places. The first amendment specifies that the Chief Justice "shall be administered the oath by the Presiding Officer of the Senate;" this corrects the present silence of Rule IV as to how the

oath is administered to the Chief Justice, and emphasizes that the impeachment trial is a Senate process.

The second change to Rule IV deletes the phrase "of the Supreme Court" in order to conform to statutory and preferred usage for the formal title of the Chief Justice of the United States.

V. POWERS OF THE PRESIDING OFFICER IN AN IMPEACHMENT TRIAL

Rule V, which authorizes the Presiding Officer to issue Senate processes and to enforce Senate regulation and orders, *is reported without change.*

VI. POWERS OF THE SENATE IN AN IMPEACHMENT TRIAL

Rule VI, which relates to the Senate's power to compel the attendance of witnesses and otherwise enforce Senate processes, *is reported without change.*

VII. PRESIDING OFFICER AND PROCEDURE DURING IMPEACHMENT TRIAL

Rule VII, which describes the duties of the Presiding Officer of the Senate in preparing the Chamber for trial, and the duties of the Presiding Officer on the trial regarding the conduct of proceedings and the ruling on questions of evidence and incidental questions, is amended in three parts. The first of these amendments enumerates and emphasizes the kinds of rulings the Presiding Officer is expected to make by adding to the words questions of evidence: "including, but not limited to, questions of relevance, materiality, and redundancy."

The second change is the insertion of the phrase "without debate" in the second sentence. The intent of this change is to make it clear that a decision by the Senate to overrule or sustain a ruling of the Presiding Officer is not to be deliberated in open session. This change would conform Rule VII with the other impeachment rules, e.g. Rule XXIV, which provide that decisions on these and other matters shall be "without debate, except when the doors shall be closed for deliberation."

The third change being proposed to Rule VII is the deletion of the last sentence which effectively requires the Senate to arrive at its decisions by voice vote unless the yeas and nays are demanded. The Committee's substitute language would allow the Senate to vote its decisions "in accordance with the Standing Rules of the Senate," that is, by voice vote or by a division, or, when requested by one-fifth of the members present, by the yeas and nays.

VIII. SUMMONS TO THE IMPEACHED PERSON

Rule VIII, which provides for issuance and service of summons and related matters, is amended in four places to substitute the phrase "person impeached" for the word "accused" or the phrase "person accused." This change would conform usage throughout the rules to "person impeached," and would further emphasize that this judicial proceeding is a political process in the Senate and not a criminal process in a Federal court. Moreover, this conforming change more accurately describes the person named in the articles since regardless of the outcome of the trial in the Senate, a person

impeached by the House of Representatives remains forever impeached.

IX. ADMINISTERING OATH TO RETURNING OFFICER UPON RETURN OF SUMMONS AGAINST THE PERSON IMPEACHED

Rule IX, which specifies the oath to be adminstered to the returning officer and the time for and manner of effecting the return of the summons against the person impeached, *is reported without change.*

X. IMPEACHED PERSON (OR AGENT) CALLED UPON TO APPEAR AND TESTIFY

Rule X, which sets out the procedure for the impeached person (or agent) filing the answer to the articles of impeachment, *is reported without change.*

XI. A COMMITTEE MAY BE APPOINTED TO TAKE EVIDENCE AND REPORT

Rule XI, which provides for the appointment of 12 Senators to a committee to receive evidence and to take testimony "upon the order of the Senate" is amended in two relatively minor particulars. First, the committee substitutes the phrase "if the Senate so orders" for "upon the order of the senate" relating to the utilization of the committee device which was added to the rules in 1935. The reason for this language change is to make it doubly clear that when the committee device authorized by the rule is desired, it must be ordered by the Senate.

The Committee also removes the requirement that the committee authorized by the rule be fixed at twelve Senators. It was the consensus of the members that the committee's composition should be left open and thus allow the Senate to appoint members in accord with the needs of the situation.

XII. TIME AND PROCEDURE OF IMPEACHMENT TRIAL

Rule XII, which deals with the conduct of the trail, including the preparation of the Senate Chamber in order to accommodate the House of Representatives, is amended in two places. Under the present rule, time to suspend legislative and executive business and begin the trial is fixed at "12:30 o'clock afternoon." In order to allow additional flexibility in fixing the time for trial, the Committee inserted immediately after the phrase "At 12:30 o'clock afternoon" the phrase "or such other hour as the Senate shall order."

The other change in Rule XII approved by the Committee is the deletion of final clause following the phrase "in the Senate Chamber," which clause reads: "* * * which chamber is prepared with accommodations for the reception of the House of Representatives." The elimination of the clause which formalized frequent, if not uniform past practice of attendance by the House of Representatives at trial was widely though impracticable since the Chamber would not readily accommodate 435 members, diplomatic and other officials, and representatives of the general public. A consensus of Committee members supported the idea that the rules should remain silent in this regard and recommend that the Senate

modify the tradition to the extent of accommodating a delegation from the House of Representatives.

XIII. TIME AND PROCEDURE OF TRAIL AND ADJOURNMENT OF THE TRIAL

Rule XIII, which sets the hour for resumption of the trail, as well as the procedure for commencing the business of the trail and adjourning the Senate when sitting for such purpose, is amended in several minor particulars. The Committee strikes out the phrase "for such thing" following the first semicolon and the phrase "the Presiding Officer of the Senate shall so announce; and thereupon" which follows shortly thereafter.

The phrase "for such thing" was apparently intended to be "for such sitting", an error perpetuated by the rules since they were formalized for the Johnson trial. (See 3 Hind's Precedents of the House of Representatives Sec. 2069.) There was general agreement that either way the phrase was written, it did not materially add to the meaning or clarity of the rule. Accordingly, it was eliminated altogether.

The second phrase eliminated from the rule, viz: "the Presiding Officer of the Senate shall so announce; and thereupon" is regarded as being unnecessary, if not redundant.

XIV. RECORD OF PROCEEDINGS OF TRIAL

Rule XIV, which requires the Secretary of the Senate to record and report proceedings in impeachment cases in the same manner as legislative proceedings, *is reported without change.*

XV. COUNSEL TO BE HEARD

Rule XV, which provides for representation by and participation of counsel for the parties, *is reported without change.*

XVI. ALL PROCEEDINGS ADDRESSED TO THE CHAIR (WHICH MAY BE REQUIRED TO BE IN WRITING)

Rule XVI, which requires the parties to address all motions to the Presiding Officer and, if required by the Chair or by a Senator, that they be reduced to writing, is amended by striking out the first part thereof down to the conjunction, viz: "All motions made by the parties or their counsel shall be addressed to the Presiding Officer, * * *" In place of the deleted clause the Committee substitutes the following:

> All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediately to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only, * * *

This revision is largely intended to clarify the practice under the rules and to ensure that all remarks are addressed to the Presiding Officer.

The balance of Rule XVI which provides that the Presiding Officer or any Senator may require that specified actions, such as mo-

tions, etc., be reduced to writing and read from the Secretary's table, *remains unchanged.*

XVII. EXAMINATION OF WITNESSES

Rule XVII, which provides for direct and cross examination of witnesses, *is reported without change.*

XVIII. SENATOR SWORN AGAIN IF CALLED AS WITNESS

Rule XVIII, which provides that a Senator who is called as a witness shall give his testimony standing in place, *is reported without change.*

XIX. PROCEDURE FOR QUESTIONS PUT BY SENATORS

Rule XIX, which provides that if a Senator wishes to make a motion or an order or to question a witness, he must reduce his demand to writing and submit it to the Presiding Officer, is amended twice.

The Committee adopts an amendment which inserts after the word "witness" the phase "or to a manager, or counsel of the person impeached." A technical correction adds the word "to" before the word "counsel."

The Committee adds three new sentences to Rule XIX which read as follows:

> The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objection shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

XX. OPEN OR CLOSED SESSIONS DURING IMPEACHMENT TRIAL

Rule XX, which requires the doors of the senate to be open upon trial of an impeachment unless ordered to be closed for purposes of deliberating any order or decision as provided in Impeachment Rule XXIV, is amended by adding the following new sentence:

> A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.

This revision to some extent formalizes the precedents under the existing rules. For example, during the Johnson trial, Chief Justice Chase cast a tie-breaking vote thus enabling the Senate to deliberate behind close doors. Although the legislative rule (present Rule XXI) permits the Senate to go into closed session when a motion to that effect is seconded, the practice on impeachment trials has been to vote the question by voice vote or by the yeas and nays. Accordingly, the Committee for all practical purposes revises the rule to blend the precedents with unanimous consent procedures. As such, the Senate upon proper motion may proceed behind closed doors unless objection is heard, in which case the yeas and nays shall be ordered.

XXI. DEBATE OF QUESTIONS: ONE HOUR LIMIT

Rule XXI, which fixes the time for debate on preliminary and interlocutory questions and all motions at one hour unless extended by Senate order, is amended by striking out the final phase, viz: "unless the Senate shall, by order, extend the time" and inserting after the word "hour" and before the phrase "on each side" the phrase "(unless the Senate shall otherwise order)." Under the wording of the present rule, argument on these matters may be had for at least one hour on each side and that time extended by order of the Senate. Committee members unanimously agreed that the Senate should have the flexibility to reduce as well as to extend the time for these matters in light of circumstances during trial.

XXII. DEBATE AND NUMBER OF PARTICIPANTS DURING TRIAL

Rule XXII, which provides the procedure for opening and closing arguments, *is reported without change.*

XXIII. VOTE OF ARTICLES—ARTICLE NOT DIVISIBLE—IMPEACHED GUILTY IF CONVICTED OF ONE ARTICLE

Rule XXIII, which deals generally with voting the final question, is amended in several important ways. a pair of new restrictions is added at the beginning of the rule. These read as follows:

> An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die.

The portion of the amendment effectively enjoining the division of an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by "one or more of the" enumerated specifications. The general view of the Committee at that time was expressed by Senators Byrd and Allen, both of whom felt that division of the articles in question into potentially 14 separately voted specifications might "be time consuming and confusing, and a matter which could create great chaos and division, bitterness, and ill will * * *." Accordingly, it was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was "guilty" of one or more of the enumerated specifications.

The provision requiring the Senate to dispose of the final question once it has commenced voting the articles of impeachment or, alternatively, either adjourn for 24 hours or without day, is intended to prevent a recurrence of the incident during the Johnson trial when the Senate having failed to convict on the first article to be voted (No. 11) proceeded to adjourn for fourteen days before considering the other articles. Thereafter, when the Senate again failed to convict on two of the remaining 10 articles, it adjourned without day. Committee members were agreed that such a course of action could have unsettling consequences which should be avoided at all costs.

The provision of the present rule which requires that the yeas and nays be taken on each article is retained. Similarly, the rule would continue to provide that a judgment of acquittal shall be entered if none of the articles is voted by two-thirds of the members present.

However, in place of the provision that reads:

* * * but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment and a certified copy of such judgment shall be deposited in the office of the Secretary of State. The Committee substitutes the following:

* * * but if the person impeached shall be convicted upon any such article by votes of two-thirds of the members present the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State.

As will be observed the present text of impeachment Rule XXIII virtually requires the Senate to enter judgment if the person impeached "* * * be convicted upon * * * articles by the vote of two-thirds of the members present." Under terms of the amendment the Senate may take up such matters as the desirability of voting on all of the articles after conviction on one of them before entering a judgment conviction. It is expected that flexibility allowed by the change will expedite the proceedings. Since under the prevailing view a two-thirds vote to convict on any article operates as an automatic removal from office, the Senate may not wish to vote the other articles. Also, it is contemplated that the Senate, in the interval allowed by the amended version of the rule, may wish to consider whether or not to vote the additional consequence provided by the Constitution in the case of an impeached and convicted civil officer, viz: permanent disqualification from elected or appointive office.

A new sentence is added at the end of the rule providing that "A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order. "The purpose of this restriction is to obviate the confusion that would invariably attend a reversal of a vote to convict when, according to most authorities, such a vote operates automatically and instantaneously to separate the person impeached from the office. Under ordinary circumstances the Senate has two days for reconsideration. Since the trial rules are silent with respect to a motion to reconsider, the rules of

Senate applicable to legislative matters would apply. Consequently, the effect of this change is to preclude the operation of the normal rule in the context of a vote on the final question, whether such vote is to convict or to acquit. As explained during the hearings:

The critical thing arises * * * in this way * * * It (separation of the man from the office) becomes irrevocable according to the Constitution, (as viewed) by most authorities and the President is out as of that second. * * * And if a motion to reconsider is in order, the Senator might be coming in the door, and the Senate is ready to vote. * * * Then he (a Senator) comes in. He is allowed to vote. And he casts his vote. And it could possibly put the President back in. * * * Well, the President is out. The Vice President is in. And here we have two claimants to the office.

The Committee added a new paragraph to Rule XXIII whose heading reads "From of putting the question on each article of impeachment." This addition largely formalizes the fairly simple practice in putting the final question in the two most recent impeachment trials, the Louderback and Ritter Impeachment trials. It provides that "The Presiding Officer shall first state the question: thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty." This contrasts with the more cumbersome and time consuming procedure used at an earlier time, such as during the Johnson trial, when the Chief Justice directed the Secretary of the Senate to call the names of the Senators, and as each rose in his place, the question was repeated anew to him as well as soliciting his position thereon.

XXIV. PROCEDURE FOR ACTION ON ORDERS AND DECISIONS, AND DEBATE IN CLOSED SESSION

Rule XXIV, which deals with voting on orders and decisions and the procedure for going behind closed doors in order to deliberate these and other matters, is amended to incorporate the unanimous-consent procedure proposed to be added to Rule XX. Since many orders and decisions are believed to involve noncontroversial matters, it is the Committee's belief that they may be dispensed with without objections. However, in the event of objection, the yeas and nays may be had. Under the present rule "All orders and decision shall be made and had by yeas and nays." In place of this language the Committee substitutes "All orders and decisions may be acted upon without objection, or if objection is heard, the orders and decisions shall be voted on without debate 'by yeas and nays' ".

XXV. PROCEDURE FOR SWEARING WITNESSES AND FORMS OF OATHS

Rule XXV, which contains the forms of oath, process, and the like, is amended in several small particulars. A technical correction in the heading changes "Form of a subpena be issued," so as to read "Form of a subpena to be issued," etc.

The Committee initially inserted the phrase "and the Chief Justice" after the word "Senate" in the heading relating to the form of the oath to be taken by members. Briefly, it is intended that the Chief Justice take the same oath in conformity with the change to Rule IV. Subsequently, the words "and the Presiding Officer" were substituted for "and the Chief Justice" to make the provision

accord with the intent of the Committee which is to have any Presiding Officer, whoever he may be, take the oath.

The form of the summons was amended in order to delete the precise hour, viz: "12:30 * * * afternoon", when the person impeached or his counsel is to file his answer. This technical correction is designed to effectuate the Committee's desire to give the Senate ample flexibility in setting times.

As its final amendment, the Committee substitutes the word "Senate" for the word "Court," the last word in Rule XXV. This change corrects on obvious oversight made at the time of the Johnson trial when the Senate undertook to eliminate all references to itself as being a court.

XXVI. ORDER FOR CHANGE IN SCHEDULE

Rule XXVI, which provides that if the Senate fails to sit as scheduled for consideration of articles of impeachment, it may adopt an order fixing the time for resuming such consideration, is reported without change.

CHANGES IN EXISTING RULES

Changes in existing impeachment rules made by the resolution (S. Res. 479), as reported, are shown as follows (existing rules in which no change is proposed are shown entirely in roman; existing matter proposed to be omitted is enclosed in black brackets; and new matter is shown in italic):

RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHEN SITTING ON IMPEACHMENT TRIALS

I. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person and are directed to carry articles of impeachment to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to such notice.

II. When the managers of an impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against any person, the Presiding Officer of the Senate shall direct the Sergeant at Arms to make proclamation, who shall, after making proclamation, repeat the following words, viz: "All persons are commanded to keep silence, on pain of imprisonment while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against ———— ————"; after which the articles shall be exhibited, and then the Presiding Officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

III. Upon such articles being presented to the Senate, the Senate shall, at 1 o'clock afternoon of the day (Sunday excepted) following such presentation, or sooner if ordered by the Senate, proceed to the consideration of such articles and shall continue in session

from day to day (Sundays excepted) after the trial shall commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the Presiding Officer shall administer the oath hereinafter provided to the members of the Senate then present and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

IV. When the President of the United States or the Vice President of the United States, upon whom the powers and duties of the office of President shall have devolved, shall be impeached, the Chief Justice of the [Supreme Court of the] United States shall preside; and in a case requiring the said Chief Justice to preside notice shall be given to him by the Presiding Officer of the Senate of the time and place fixed for the consideration of the articles of impeachment, as aforesaid, with a request to attend; and the said Chief Justice *shall be administered the oath by the Presiding Officer of the Senate and* shall preside over the Senate during the consideration of said articles and upon the trial of the person impeached therein.

V. The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorized or provide.

VI. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of, and disobedience to, its authority, orders, mandates, writs, precepts, or judgments, and to make all lawful orders, rules, and regulations which it may deem essential or conducive to the ends of justice. And the Sergeant at Arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

VII. The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. And the Presiding Officer on the trial may rule *on* all questions *of evidence including, but not limited to, questions of relevancy, materiality, and redundancy* of evidence and incidential questions, which ruling shall stand as the judgment of the Senate, unless some member of the Senate shall ask that a formal vote be taken thereon, in which case it shall be submitted to the Senate for decision *without debate*; or he may at his option, in the first instance, submit any such question to a vote of the members of the Senate. Upon all such questions the vote shall be [without a division, unless the yeas and nays be demanded by one fifth of the members present, when the same shall be taken.] *taken in accordance with the Standing rules of the Senate.*

VIII. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of sum-

mons shall issue to the [accused,] *person impeached,* reciting said articles, and notifying him to appear before the Senate upon a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide the orders and judgments of the Senate thereon; which writ shall be served by such officer or person as shall be named in the precept thereof, such number of days prior to the day fixed for such appearance as shall be named in such precept, either by the delivery of an attested copy thereof to the person [accused,] *impeached,* or if that cannot conveniently be done, by leaving such copy at the last known place of abode of such person, or at his usual place of business in some conspicuous place therein; or if such service shall be in the judgment of the Senate, impracticable, notice to the [accused] *person impeached* to appear shall be given in such other manner, by publication or otherwise, as shall be deemed just; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the [accused,] *person impeached,* after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed, nevertheless, as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

IX. At 12:30 o'clock afternoon of the day appointed for the return of the summons against the person impeached, the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer in the form following, viz: "I, ———— ————, do solemnly swear that the return made by me upon the process issued on the ———— day of ———— ————, is truly made, and that I have performed such service as therein described: So help me God." Which oath shall be entered at large on the records.

X. The person impeached shall then be called to appear and answer the articles of impeachment against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or by agent or attorney, naming the person appearing and the capacity in which he appears. If he does not appear, either personally or by agent or attorney, the same shall be recorded.

XI. That in the trial of any impeachment the Presiding Officer of the Senate, [upon the order of the Senate,] *if the Senate so orders,* shall appoint a committee of [twelve] Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in

writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate.

XII. At 12:30 o'clock [afternoon] *afternoon, or at such other hour as the Senate may order,* of the day appointed for the trial of an impeachment, the legislative and executive business of the Senate shall be suspended, and the Secretary shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ———— ————, in the Senate [Chamber, which chamber is prepared with accommodations for the reception of the House of Representatives.] *Chamber.*

XIII. The hour of the day at which the Senate shall sit upon the trial of an impeachment shall be (unless otherwise ordered) 12 o'clock m.; and when the hour [for such thing] shall arrive, [the Presiding Officer of the Senate shall so announce; and thereupon] the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate; but on such adjournment the Senate shall resume the consideration of its legislative and executive business.

XIV. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate.

XV. Counsel for the parties shall be admitted to appear and be heard upon an impeachment.

XVI. [All motions made by the parties or their counsel shall be addressed to the Presiding Officer,] *All motions, objections, requests, or applications whether relating to the procedure of the Senate or relating immediatly to the trial (including questions with respect to admission of evidence or other questions arising during the trial) made by the parties or their counsel shall be addressed to the Presiding Officer only,* and if he, or any Senator, shall require it, they shall be committed to writing, and read at the Secretary's table.

XVII. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

XVIII. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

XIX. If a Senator wishes a question to be put to a witness, *or to a manager, or to counsel of the person impeached,* or to offer a motion or order (except a motion to adjourn), it shall be reduced to writing, and put by the Presiding Officer. *The parties or their counsel may interpose objections to witnesses answering questions propounded at the request of any Senator and the merits of any such objection may be argued by the parties or their counsel. Ruling on any such objec-*

tion shall be made as provided in Rule VII. It shall not be in order for any Senator to engage in colloquy.

XX. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, unless the Senate shall direct the doors to be closed while deliberating upon its decisions. *A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record.*

XXI. All preliminary or interlocutory questions, and all motions, shall be argued for not exceeding one hour *(unless the Senate otherwise orders)* on each [side, unless the Senate shall, by order, extend the time.] *side.*

XXII. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate upon application for that purpose), and the argument shall be opened and closed on the part of the House of Representatives.

XXIII. *An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for a period not to exceed one day or adjourns sine die.* On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; [but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the Secretary of State.] *but if the person impeached shall be convicted upon any such article by the votes of two-thirds of the members present, the Senate may proceed to the consideration of such other matters as may be determined to be appropriate prior to pronouncing judgment. Upon pronouncing judgment, a certified copy of such judgment shall be deposited in the office of the Secretary of State. A motion to reconsider the vote by which any article of impeachment is sustained or rejected shall not be in order.*

Form of putting the question on each article of impeachment

The Presiding Officer shall first state the question; thereafter each Senator, as his name is called, shall rise in his place and answer: guilty or not guilty.

XXIV. [All the orders and decisions shall be made and had [*All the orders and decisions may be acted upon without objection, or, if objection is heard, the orders and decisions shall be voted on without debate* by yeas and nays, which shall be entered on the record, [and without debate,] subject, however, to the operation of Rule VII, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question,

and for not more than ten minutes on an interlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by one-fifth of the members present. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not on the final question on each article of impeachment.

XXV. Witnesses shall be sworn in the following form, vix: "You, ———— ————, do swear (or affirm, as the case may be) that the evidence you shall give in the case now pending between the United States ———— ————, shall be the truth, the whole truth, and nothing be the truth: So help you God." Which oath shall be administered by the Secretary, or any other duly authorized person.

Form of a subpena to be issued on the application of the managers of the impeachment, or of the party impeached, or of his counsel

To ———— ————, greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the ———— day of ————, at the Senate Chamber in the city of Washington, then and there to testify your knowledge in the cause 2hich is before the Senate in which the House of Representatives have impeached ———— ————.

Fail not.

Witness ———— ————, and Presiding Officer of the Senate, at the city of Washington, this ———— day of ————, in the year of our Lord ————, and of the Independence of the United States the ————.

————— ————,
Presiding Officer of the Senate.

Form of direction for the service of said subpena

The Senate of the United States to ———— ————, greeting:

You are hereby commanded to serve and return the within subpena according to law.

Dated at Washington, this ———— day of ————, in the year of our Lord ————, and the Independence of the United States the ————.

————— ————,
Secretary of the Senate.

Form of oath to be administered to the members of the Senate and the Presiding Officer sitting in the trial of impeachments

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of ———— ————, now pending, I will do impartial justice according to the Constitution and laws: So help me God."

Form of summons to be issued and served upon the person impeached

THE UNITED STATES OF AMERICA, *ss:*
The Senate of the United States to ———— ————, greeting:

Whereas the House of Representative of the United States of America did, on the ———— day of ————, exhibit to the Senate articles of impeachment against you, the said ———— ————, in the words following:

[Here insert the articles]

And demand that you, the said ———— ————, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said ———— ————, are therefore hereby summoned to be and appear before the Senate of the United States of America, at the Chamber in the city of Washington, on the ———— day of ————, [at 12:30 o'clock afternoon,] *at ———— o'clock* ————, then and there to answer to the articles of impeachment, and then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness ———— ————, and Presiding Officer of the said Senate, at the city of Washington, this ———— day of ————, in the year of our Lord ————, and of the Independence of the United States the ————.

———— ————,
Presiding Officer of the Senate.

Form of precept to be indorsed on said writ of summons

THE UNITED STATES OF AMERICA, *ss:*
The Senate of the United States to ———— ————, greeting:

You are hereby commanded to deliver and leave with ———— ————, if conveniently to be found, or if not, to leave at his usual place of abode, or at his usual place of business in some conspicious place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichever way you perform the service, let it be done at least ———— days before the appearance day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings, thereon indorsed, on or before the appearance day mentioned in the said writ of summons.

Witness ———— ————, and Presiding Officer of the Senate, at the city of Washington, this ———— day of ————, in the year of our Lord ————, and of the Independence of the United States the ————.

———— ————,
Presiding Officer of the Senate.

All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the [court.] *Senate.*

XXVI. If the Senate shall at any time fail to sit for the consideration of articles of impeachment on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

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Calendar No. 852

99TH CONGRESS
2d Session

SENATE

REPORT
99-404

RELATING TO TELEPHONE SERVICES FOR SENATORS

AUGUST 14 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. MATHIAS, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. 2759]

The Committee on Rules and Administration, having considered an original bill (S. 2759) relating to telephone services for Senators, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 2759 amends section 58a of title 2 of the United States Code by deleting the provision prohibiting the Sergeant at Arms from paying for telecommunications services in Senators' home state offices for which the charge is based on the amount of time the service is used. The immediate purpose of the bill is to allow the Sergeant at Arms to pay for the cost of time-sensitive long distance service, up to the amount of the monthly cost for Federal Telecommunications System (FTS) service, whenever the Sergeant at Arms determines that service other than FTS service would be more economical or would provide significantly improved accessibility or transmission quality. The Committee adopted a regulation effecting the immediate purpose of the bill simultaneous with Committee action on the bill. The regulation adopted by the Committee states:

> Whenever the Sergeant at Arms determines that payment for time-sensitive long-distance service from a Senator's State office would be more economical than using FTS service or that use of service other than FTS would provide significantly improved accessibility or transmission quality, the Sergeant at Arms is authorized to pay a portion of the monthly charge for such time-sensitive serv-

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ice, not to exceed the monthly cost of FTS service to such office.

COMMITTEE ACTION

The Committee considered this matter in a meeting on August 12, 1986, and voted to favorably report the bill. Supporting statements were received from the Honorable James A. McClure, a Senator from Idaho, and from Mr. Ernest E. Garcia, Senate Sergeant at Arms.

COST ESTIMATE

A cost estimate from the Congressional Budget Office will be published in the Congressional Record when it is received.

REGULATORY IMPACT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration does not consider that enactment of S. 2759 would have any regulatory impact.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2759, as reported by the Committee on Rules and Administration, are shown as follows (existing law proposed to be omitted is enclosed in black brackets):

SECTION 1205(a) OF THE SUPPLEMENTAL APPROPRIATIONS ACT, 1984

SEC. 1205. (a) The Sergeant at Arms and Doorkeeper of the Senate shall furnish each Senator local and long-distance telecommunications services in Washington, District of Columbia, and in such Senator's State [(except services for which the charge is based on the amount of time the service is used)] in accordance with regulations prescribed by the Senate Committee on Rules and Administration; and the costs of such service shall be paid out of the contingent fund of the Senate from moneys appropriated to him for that purpose.

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